

Application No. 10/552,858
July 28, 2008

REMARKS

Claims 2 – 9 and 19 are currently pending. Claims 5 and 19 are the pending independent claims.

I. Restriction

The Examiner issued a restriction requirement in the Office Action based on alleged “lack of unity” under PCT Rule 13.1. The Examiner divided the claims into the following alleged patentably distinct groups: Group I (Claims 1 – 9); Group II (Claims 10 – 13); and Group III (Claims 14 – 18). The Examiner previously communicated this restriction to Applicants via their attorney of record by telephone, wherein Applicants provisionally elected the claims of Group I (Claims 1 – 9) for prosecution in this case.

In response to this restriction, Applicants hereby confirm their earlier, provisional election of Group I (Claims 1 – 9), with traverse. To this end, Applicants have cancelled Claims 10 – 18 herein. However, it is to be noted that cancellation of these remaining claims is without prejudice to and without waiver of Applicants’ right to further prosecution the subject matter of Claims 10 – 18 in this case or in one or more divisional or other applications.

II. Information Disclosure Statement

The Examiner also objected to Applicants’ IDS filed on October 12, 2005, claiming they failed to fully comply with 37 CFR 1.98(a)(2), by not enclosing copies of foreign patent documents and of the non-patent literature with the IDS. In response, copies of the two foreign patent documents and of the two non-patent literature references are enclosed in the accompanying Supplemental Information Disclosure Statement. It is therefore respectfully requested that these references be considered by the Examiner.

III. Objection to the Specification

The Examiner also objected to the word “bretain” on page 11 of the specification as being misspelled. In response, Applicants have amended the spelling from “bretain” to “betaine.”

IV. Section 112 Rejections

The Examiner rejected Claim 1 – 9 under Section 112, second paragraph, as allegedly indefinite. The Examiner raised a total of 6 indefiniteness rejections with regard to these claims.

First, the Examiner contends that Formula II A, in Claim 1, is misdrawn because, in his view, the minus charge is improperly placed “inside the bond between O and Carbon.” In response, Applicants respectfully submit that it would have been sufficiently clear to a person of ordinary skill that the negative charge is in fact associated with the more electronegative oxygen atom. A person of ordinary skill in the chemical arts would readily comprehend the import of the structure of Formula II A. Nonetheless, in order to advance the prosecution of the case, Applicants have revised Formula II A to place the negative sign on the other side of the oxygen atom, away from the carbon – oxygen bond. Because such changes to the chemical formula are difficult to illustrate using the conventional strikethrough and underlining format, the revision is presented by canceling Claim 1 and presenting new Claim 19 in its place.

Second, the Examiner makes a similar contention that the plus charge in Formula I, in Claim 1, is misplaced. Again, it is submitted that a person of ordinary skill in the art would have no difficulty understanding the import of Formula I as currently drawn. Nonetheless, Formula I has also been revised to move the positive sign to the other side of the nitrogen atom.

Third, the Examiner asserts it would be impossible to tell what claim 2 is drawn to. In response, Claim 2 is amended herein to more clearly specify a process according to Claim 19 wherein the compound of formula IIA or IIB (the two options

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in Claim 19) is a compound of formula IIA, and that in this compound the variable n is 1 or 2.

Fourth, the Examiner contends that the second compound recited in Claim 4 is misnamed because, in his view, the substituent should be referred to as a “carboxylato” rather than a “carboxy.” Claim 4 has been amended to make the requested correction.

Fifth, the Examiner objects that the structure of Formula V is referred to in independent Claim 5, but not included as a part of the claim. In response, Claim 5 is amended to expressly include the structure of Formula V.

Finally, the Examiner objects to the fact that process Claim 9 allegedly depends from composition Claim 5. In response, Applicants note that the dependency of Claim 9 upon Claim 5 was eliminated in the preliminary amendment filed on October 12, 2005. In view of this prior amendment, it is submitted that this objection in fact is moot and should not have been raised again in this action.

V. Prior Art Rejections

Turning to the prior art, Claims 1, 2, 4, 8, and 9 were rejected as allegedly anticipated in the disclosure contained in U.S. Patent Application Publication No. 2005/0043531 to Handa et al. (“Handa”). Claims 3 and 5 – 7 were also rejected as allegedly obvious from the disclosure in the Handa reference.

Without acknowledging whether the claims are or are not patentable over Handa, Applicants note that Handa is cited only under Section 102 (e) and, as the Examiner correctly notes, the 102 (e) date for Handa is said to be October 17, 2003. The present application, on the other hand, claims priority under Section 119 to three prior Austrian applications filed on April 16, 2003. All three of these priority applications predate Handa and, if the disclosure of any supports what is called for in the claims under review, the rejection based on Handa must be withdrawn. The three Austrian applications are as follows:

Austrian Application 584/2003 (the ‘584 application);
Austrian Application 585/2003 (the ‘585 application); and
Austrian Application 586/2003 (the ‘586 application).

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Applicants submit herewith English translations of the Austrian ‘584, ‘585, and ‘586 priority applications. From these translations, it may be seen that at least the ‘586 priority application supports each of the currently pending claims. Specifically, support for the current claims may be found in at least the following portions of the ‘586 application:

Claim	Location in Priority ‘586 Application
2	Page 3, lines 10 – 14; Claim 2
3	Claim 3
4	Examples 3 & 4; Claims 4 & 5
5	Page 3, lines 1 – 8; Claim 6
6	Page 5, lines 12 – 15; Claim 7
8	Examples 1, 3 & 4; Claim 8
9	Page 4, lines 13 – 17; Claim 9
19	Page 1, line 25 – Page 3, line 6; Claim 1

In view of the above, it is submitted that the claims are fully supported by the disclosure in the prior-filed ‘586 application and that the invention as recited in the currently pending claims therefore antedates the 102 (e) date of the Handa reference. Accordingly, Handa is not properly citable under Section 102 (e), and the prior art rejections based upon it should be withdrawn.

In light of the foregoing, Applicants urge the Examiner to reconsider the application, to withdraw all objections and rejections, and to issue a Notice of Allowance at the earliest possible convenience.¹

¹ Applicants note the Examiner’s invitation to Applicants to consider commenting upon 20050080070 relative to a possible interference. With all due respect and without waiver of any right, claim, defense, or other matter or aspect relative thereto, Applicants wish to defer any comment at this time on the matter of whether and to what extent, if any, there may or may not be any arguable basis for an interference with regard to any of the claims in their present application and any claims in the noted application or any patent relative thereto.

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In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,
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Encls.: Copies of translations of Australian application 584/2003; 585/2003; and 586/2003
Supplemental Information Disclosure Statement

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